



Setti D. Warren
Mayor

City of Newton, Massachusetts
Department of Planning and Development
1000 Commonwealth Avenue Newton, Massachusetts 02459


Telephone
(617) 796-1120
Telefax
(617) 796-1142
TDD/TTY
(617) 796-1089
www.newtonma.gov

Candace Havens
Director

MEMORANDUM

DATE: February 7, 2013

TO: Marcia Johnson, Zoning and Planning Committee Chair
Members of the Zoning and Planning Committee

FROM: Candace Havens, Director of Planning and Development 

SUBJECT: Sidewalk Café Ordinance

MEETING DATE: February 11, 2013

CC: John Lojek, Commissioner of Inspectional Services
Dori Zaleznik, Commissioner of Health and Human Services
Bob Rooney, Chief Operating Officer
Maura O'Keefe, Assistant City Solicitor
Marie Lawlor, Assistant City Solicitor

Attached is draft language for a sidewalk café ordinance for the Committee's review. Planning and Law Department staff will be on hand to review with the Committee and to amend it, as needed, based on additional Committee input in preparation for a public hearing on February 25, 2013.

Changes to several portions of the City Code will be needed in order to execute such an ordinance, including the assignment of oversight to Health and Human Services Department and amendments to the Zoning Regulations to clarify that seating allowed by the proposed ordinance will not trigger a special permit requirement; proposed changes to the zoning text will be provided prior to the public hearing. The provisions for sidewalk alcohol service must comply with the guidelines from the Alcohol and Beverage Control Commission (ABCC).

Attachment A: Draft Sidewalk Café Ordinance

ATTACHMENT A

Sec. 26-30. Permits for cafe furniture on sidewalks.

(a) The Commissioner of Health and Human Services, or his or her designee, may grant revocable permits for the placement of certain cafe furniture upon designated areas of the public sidewalk. The Commissioner shall consult with the Fire, Police, Public Works, Inspectional Services, and Planning Departments prior to granting or denying a permit under this section. Permits shall be issued in accordance with the following standards:

(1) Permits may only be granted to the proprietor of the business premises which immediately abuts the sidewalk area affected by the permit. Such cafe furniture may be placed upon the sidewalk only during the business hours of the permitted party. All cafe furniture and trash receptacles must be removed at the end of each business day and, in addition, must be removed at any time upon the request of the Commissioner or his designee when he determines that the public convenience and welfare require such removal.

(2) Permits allow for the placement of tables, chairs, benches, shade umbrellas, and other appurtenances as may be approved or otherwise required by the Commissioner. The number, type and placement of such tables, chairs, benches, shade umbrellas, and other appurtenances shall be subject to the approval of the Commissioner, in consultation with other appropriate Departments of the City, and in conformity with any applicable zoning ordinances. All such tables, chairs, benches, shade umbrellas and other

appurtenances shall be temporarily placed upon the sidewalk surface and shall not be affixed thereto. Any shade umbrellas shall be fastened, weighted and otherwise secured while in use.

(3) Permits may only be granted in those circumstances where the Commissioner of Health and Human Services, or his or her designee, after consultation with the Inspectional Services Department, has determined that the placement of such cafe furniture would not interfere with adequate pedestrian passage upon the public sidewalk at the site, taking into account the flow and level of pedestrian traffic and the location of other fixtures upon the sidewalk including utility poles, newspaper vending boxes and the like. In no event shall a permit be granted in circumstances where the placement of such cafe furniture would result in a pedestrian passageway upon the public sidewalk of less than four feet (4') in width.

(b) As a pre-condition of the issuance of any such permit the commissioner shall require the permitted party to indemnify, hold harmless and defend the City of Newton from any claims arising out of the permitted activity; and the Commissioner shall require the permitted party to provide proof of adequate liability insurance and/or bond, in such form, amount, and with an insurance carrier or surety satisfactory to the Commissioner for the performance by the permitted party of the requirements of the permit and this section.

(c) The term of each permit shall be one year and shall expire on December 31st unless renewed. The fee for each such annual permit shall be one hundred dollars (\$100.00) for the initial issuance of the permit, and fifty dollars (\$50.00) for renewals thereafter. Permits under

this section are transferrable to a successor in interest upon the submission and approval of an application for transfer to the Commissioner.

(d) Upon receipt of each permit application the Commissioner shall consult with the Board of License Commissioners, the Fire, Police, Public Works, Inspectional Services, and Planning Departments for their determinations that the placement of cafe furniture, as described in the application, would not violate existing licensing, zoning and public health requirements, respectively. Approval of the Board of License Commissioners, the Fire, Police, Public Works, Inspectional Services, and Planning Departments are all required prior to the issuance of a permit by the Commissioner of Health and Human Services, or his or her designee, under this section.

(e) All permits granted pursuant hereto must include the following provisions:

(1) That the permitted party shall place exterior trash receptacles in the sidewalk area and, at its expense, properly dispose of the trash deposited therein.

(2) That the permitted party shall be responsible for the clean-up of trash and debris from the sidewalk area and the neighboring area within a radius of twenty-five feet (25') of the sidewalk area affected by the permit.

(f) The Commissioner of Health and Human Services, or his or her designee, shall review all complaints concerning violations of the terms and conditions of any permit issued under this section. The Commissioner may impose a fine upon the permit holder, or revoke or suspend any

permit granted pursuant to this section for any violation of the terms of such permit or the provisions of this section. Prior to the imposition of a fine, revocation or suspension, the Commissioner shall provide sufficient notice to the permit holder of the violations of the terms of the permit, and provide the permit holder an opportunity to be heard during a public hearing on the matter. Violations hereunder shall be subject to a fine of (\$XX) for each violation. Each day that a violation occurs shall constitute a separate offense.

(g) All permit holders shall comply with the requirements of the Noise Ordinance at §§ 20-13 - 20-19. The Commissioner, in consultation with the Police Department and the Board of License Commissioners, may impose reasonable limitations on the hours of operation for permit holders under this section.

(h) The Health and Human Services Department, Inspectional Services Department, and Police Department shall have the authority to enforce this section.

(Ord. No. T-305, 11-1-93; Ord. No. X-175, 05-26-05)